

NO. 5:08-HC-2076-H

Respondent.

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parties have each filed proposed findings of fact and conclusions of law, and this matter is ripe for adjudication.

BACKGROUND

William Julius is a fifty-one-year-old male and has been in federal custody since November 30, 2000. At the time this action was initiated, Julius was serving a fifty-one-month sentence for substantial battery. He was due to be released June 2, 2008; however, on May 23, 2008, the government certified Julius as a sexually dangerous person pursuant to 18 U.S.C. § 4248, thereby staying Julius's release from federal custody.

A. Personal History

Julius is a Native American and a registered member of the Menominee tribe. He was born in Cleveland, Ohio, but at an early age moved with his family to the Menominee Indian Reservation in Wisconsin. Julius's father died in a car accident when he was seven years old, and his mother remarried soon thereafter. When Julius was thirteen years old, his stepfather was shot and killed by law enforcement authorities in the family home while Julius was present. Julius spent large portions of the remainder of his childhood in state mental health hospitals and foster care. He left the Menominee reservation at the age of eighteen.

Julius completed the eleventh grade and later received a GED from a technical college. He has been married once, has one

child from that union, and has four other children by four different women. His children range in age from approximately twenty-four to thirty-four, and he has no contact with any of them.

Julius has a substantial history of substance abuse. He began drinking alcohol at the age of seven and by the age of thirteen was drinking regularly at a local bar. Julius continued to drink after he was incarcerated. He made and sold alcohol while at USP Leavenworth and FCI Oxford to obtain money to use at the commissary. Julius also used marijuana, cocaine, heroin, and acid while at USP Leavenworth a number of years ago, but denies any recent drug or alcohol use.

B. Sexual Offenses

Julius has been convicted of two sexual offenses, both of which occurred while he was intoxicated. In November 1987, Julius sexually assaulted a thirteen-year-old female runaway. The victim left home and met a friend on the Menominee reservation. That evening, they and several others were drinking with Julius at his mother's residence where he was residing at the time. The victim was in a back bedroom with another individual when Julius asked the other individual to leave the room. Julius entered the room and told the victim that he intended to have sex with her. The victim began crying and Julius grabbed her by her throat, told her to shut up, and

punched her on the shoulder and left breast. Julius took the victim outside to an area where people would go to drink and sexually assaulted her, only stopping when the victim promised to let him finish later. Once inside the house, Julius confronted the victim in the kitchen and struck her in the head with a knife handle. Later, Julius took the victim to his room in the basement of the home and sexually assaulted her a second time. Julius was convicted of two counts of aggravated sexual abuse within Indian country and was sentenced to two consecutive forty-seven-month terms of imprisonment and two years' supervised release.

In July 1999, Julius sexually assaulted a longtime female acquaintance with whom he was temporarily residing at the time. The victim and Julius had been drinking throughout the July 4th holiday and the victim had thrown up and passed out more than once on that day due to her high level of intoxication. The victim was in bed, naked and asleep, when she awoke to find Julius on top of her engaging in sexual intercourse. The victim resisted and Julius hit her several times in the left jaw area and on her arms and body, temporarily rendering her unconscious. The victim was taken to the hospital. Julius was convicted of substantial battery to another and was sentenced to a fifty-one-month term of imprisonment, to run consecutive to the sentence

imposed in the state court case, and a three-year term of supervised release.

There is also an allegation of sexual assault in 1982 for which Julius was arrested. A former girlfriend of Julius's stated that he came to her apartment and tried to persuade her to have sexual intercourse. The victim spoke to him for approximately two hours, trying to convince Julius that she did not want to have intercourse with him, but he sexually assaulted her and then passed out from excessive intoxication. The case was dismissed, but Julius admitted the conduct at the hearing.

C. Non-Sexual Offenses

Julius has a substantial criminal history beginning in his childhood. When Julius was nine years old he beat a four-year-old boy unconscious with a crescent wrench after the victim hit Julius's sister with a snowball. Julius buried the boy in the snow, later removed the snow and moved the unconscious boy to a garage where he stripped the boy's clothes off, and then recovered him with snow. Julius's grandmother heard the boy whimper, found the boy, and notified the tribal police. Julius was sent to a Winnebago State Mental Hospital where he remained for a year and a half before being sent back home.

Julius testified at the hearing that he hit the boy because he was afraid he would get into trouble for letting his sister get hurt. He thought he had killed the boy and put him in the

snow to hide him, but then decided to remove the boy's clothes so that he could not be identified.

At age thirteen, Julius was convicted of theft. Between the ages of nineteen and thirty-eight, Julius was convicted of a variety of criminal offenses, including theft, escape, battery, violation of domestic abuse orders, receiving stolen property, and disorderly conduct. Julius has also been arrested, but not convicted, on numerous other occasions.

D. Conduct in Prison

Julius has had over fifty institutional Incident Reports over the twenty-one year period from 1990 to 2011, for conduct including possession or use of intoxicants, insolence, refusing an order, stealing, refusing to work, failure to stand count, fighting, assault, and interfering with staff in the performance of duties.

Some of the more recent infractions, occurring between 2009 and 2011, were for refusing to obey an order, refusing to take an alcohol test, and engaging in a group demonstration. Most recently, in December 2011, Julius slapped a fellow § 4248 civil commitment detainee, who is infirm and has difficulty walking. Julius previously threw down and injured another detainee.

COURT'S DISCUSSION

The Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006), authorizes the

indefinite civil commitment of, inter alia, individuals in the custody of the Bureau of Prisons who are determined to be sexually dangerous persons. A "sexually dangerous person" is defined by statute as one "who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others." 18 U.S.C. § 4247(a)(5). "Sexually dangerous to others" means that "the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 18 U.S.C. § 4247(a)(6).

To obtain an order civilly committing Julius pursuant to § 4248, the government must prove by clear and convincing evidence: (1) that Julius "has engaged or attempted to engage in sexually violent conduct or child molestation"; (2) that Julius currently "suffers from a serious mental illness, abnormality, or disorder"; and (3) that as a result of the serious mental illness, abnormality, or disorder, Julius "would have serious difficulty in refraining from sexually violent conduct or child molestation if released." United States v. Comstock, 627 F.3d 513, 515-16 (4th Cir. 2010). Clear and convincing evidence is "evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the

allegations sought to be established,'" or "'evidence that proves the facts at issue to be highly probable.'" United States v. Hall, 664 F.3d 456, 461 (4th Cir. 2012) (quoting Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001)).

I. Sexually Violent Conduct or Child Molestation

The government has met its burden of proving (and Julius does not dispute) that he has previously engaged or attempted to engage in sexually violent conduct or child molestation. The government has presented clear and convincing evidence that Julius sexually assaulted a thirteen-year-old girl in 1987 and an adult female in 1999. As these acts are "unlawful conduct of a sexual nature with another person" that involves the use or threatened use of force, they constitute sexually violent conduct within the meaning of § 4248. See United States v. Comstock, 627 F.3d 513, 520 (defining "sexually violent conduct" by reference to 28 C.F.R. § 549.92). Thus, the government has established the first prong of sexual dangerousness by clear and convincing evidence.

II. Serious Mental Illness, Abnormality or Disorder

The experts disagree as to whether Julius suffers from a serious mental illness, abnormality or disorder. Dr. Demby alone diagnosed Julius with paraphilia not otherwise specified ("NOS"). Both Dr. Demby and Dr. Davis diagnosed Julius with

alcohol dependence in a controlled environment; cannabis abuse; cocaine abuse; and antisocial personality disorder. Dr. Franklin did not diagnose Julius with any mental disorder.

Paraphilias are mental disorders characterized by the following:

(1) recurrent, intense sexually arousing fantasies, sexual urges or behavior;

(2) generally involving nonhuman objects, suffering or humiliation of a partner, or children or other nonconsenting persons;

(3) that occur over a period of at least six months; and

(4) causing clinically significant distress or impairment in important areas of functioning.

American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders 566 (4th ed., Text Revision 2000) ("DSM IV-TR"). There are eight specific paraphilias listed in the DSM IV-TR and a ninth category known as paraphilia NOS, which is "included for coding Paraphilias that do not meet the criteria for any of the specific categories." Id. at 576.

Dr. Demby testified that her diagnosis of paraphilia NOS was based on Julius's recurrent and intense pattern of sexual behavior that involved non-consenting persons. She noted that Julius persisted in pursuing his thirteen-year-old victim over a long period after she repeatedly told him to stop. Dr. Demby also viewed the 1999 sexual assault as clear resistance and sexual arousal in the face of resistance. Dr. Demby also found

Julius to be highly sexualized, citing his obsession with a female staff member at FCI Oxford in the mid-1990s.

Dr. Davis found the information supporting a diagnosis of paraphilia NOS to be equivocal and that Julius's intoxication at the time of his sexual assaults compromised the meaningfulness of his behavior as support for a paraphilia diagnosis. Dr. Davis reasoned that non-paraphilic rape behavior is not unusual in cases where the offender tends to be generally controlling and violent. He explained that one must ask if the rape behavior is the arousing element in the situation, or if the offender would have been satisfied with a consensual sexual encounter. Dr. Franklin generally agreed with Dr. Davis and concluded that Julius's rape behavior was the product of selfishness and alcoholic myopia, rather than sexual deviance, and concluded that there was insufficient evidence that Julius has any kind of propensity toward rape, any rape fantasies, or a persistent pattern of arousal toward non-consensual sex. The court agrees with Drs. Davis and Franklin.

There is some support in the case law that a diagnosis of paraphilia NOS non-consent would qualify as a serious mental disorder. See McGee v. Bartow, 593 F.3d 556, 581 (7th Cir. 2010) (concluding that a diagnosis of a rape-related paraphilia was a qualifying mental disorder under the Wisconsin sexually violent predator statute). However, the evidence here does not

suggest that Julius is motivated by non-consent or other sexually deviant behavior. Instead, as Drs. Franklin and Davis observed, when intoxicated Julius has not been deterred by resistance. Furthermore, the obsession with the BOP staff member that Dr. Demby noted as evidence of Julius's highly sexualized nature occurred more than fifteen years ago, and there was no sexual conduct involved. In fact, while Julius has incurred numerous infractions in BOP custody, none were sexual in nature, as Dr. Demby noted in her most recent report. The court concludes that there is not clear and convincing evidence to support a diagnosis of paraphilia NOS based on non-consent or any other sexual deviance.

Remaining are the substance dependence and antisocial personality disorder diagnoses made by Drs. Demby and Davis. Under the current state of the law, it is unclear whether substance dependence or antisocial personality disorder, alone or in combination, constitute a serious mental disorder sufficient to civilly commit an individual under the Adam Walsh Act. The government contends they are and notes the Caporale case, where the Fourth Circuit explained that the "true thrust of the § 4247(a)(6) inquiry [is] whether, on a case-specific basis, the respondent's underlying condition constitutes a serious functional impairment." United States v. Caporale, 701 F.3d 128, 137 n.4 (4th Cir. 2012). The Caporale case, however,

involved a diagnosis of hebephilia, which is a sexual disorder. In United States v. Begay, No. 5:11-HC-2197-BO, 2012 WL 3043200 (E.D.N.C. July 25, 2012), the court specifically questioned whether antisocial personality disorder, absent a companion diagnosis of a sexual disorder or paraphilia, "rises to the level of a serious mental disorder that is a sufficient basis upon which to predicate civil commitment under the Adam Walsh Act." 2012 WL 3043200, at *4 (noting that "the goal of § 4248 is to isolate sexually dangerous offenders").

The court need not decide in this case whether antisocial personality disorder or substance dependence, in combination or isolation, constitutes a serious mental disorder sufficient to civilly commit an individual under § 4248, because even assuming so, the government has not met its burden as to the third and final prong of the sexual dangerousness test.

III. Serious Difficulty Refraining from Sexually Violent Conduct or Child Molestation

To meet its burden of proof in this case, the government must demonstrate, by clear and convincing evidence, that Julius, if released, will have serious difficulty refraining from sexually violent conduct or child molestation as a result of his substance dependence and/or antisocial personality disorder. This prong "serve[s] to limit involuntary civil confinement to those who suffer from a volitional impairment rendering them

dangerous beyond their control.'" Hall, 664 F.3d at 463 (quoting Kansas v. Hendricks, 521 U.S. 346, 357 (1997)). It requires the court to conduct a "forward-looking inquiry, which attempts to predict the inmate's 'ability to refrain from acting in accord with his deviant sexual interests.'" United States v. Wooden, 693 F.3d 440, 460 (4th Cir. 2012) (quoting United States v. Francis, 686 F.3d 265, 275 (4th Cir. 2012)).

The government need not establish that the person it seeks to commit will or is likely to reoffend. However,

there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.

Kansas v. Crane, 534 U.S. 407, 413 (2002). "[I]f the person the government seeks to commit has developed the skills necessary to overcome [his inappropriate sexual urges] without [serious] difficulty," the government fails in meeting its burden as to this prong of the test. Id.

At the hearing of this matter, Julius conceded that alcohol has played a major role in his criminal offenses, both sexual and non-sexual. In fact, there is no evidence that Julius has ever committed a sexual offense while sober. The evidence in this case suggests that Julius exhibits poor judgment and gives

little consideration to the rights of others when intoxicated and, as a result, has engaged in a litany of criminal activities, including three sexual assaults. Julius testified that he has not consumed alcohol since approximately August 2008 and that he had not had a drink for some years prior. When questioned as to why he refused substance testing, Julius stated that it was a form of rebellion against what he felt was unjust treatment.

Julius by his own testimony has been admittedly non-compliant while in BOP custody, refusing work assignments, refusing to stand count, and refusing substance testing. The court is not convinced that Julius's refusal to submit to substance testing necessarily means that he is still consuming alcohol. He has received no infractions for drinking alcohol since 2008, and the testimony indicated that alcohol is accessible in the BOP for those who desire to drink. Julius acknowledged that he was an alcoholic and that he understood the problems drinking alcohol could cause for him in the future. The court finds Julius's testimony credible on this point, and it is supported by Dr. Franklin's opinion.

Julius has an extensive history of criminal conduct and antisocial behavior. Dr. Demby testified as to estimates that as high as seventy- to eighty-percent of the American prison population suffer from antisocial personality disorder.

However, Julius is now fifty-one years old. Drs. Davis and Franklin agreed that while Julius may still have some antisocial attitudes, as exhibited by his continuing to incur BOP infractions, he is at an age where the trend is to desist from criminal activity, and his defiant attitudes are less likely to translate to antisocial behavior. Furthermore, Julius has three years of supervised release to include drug and alcohol and sex offender treatment.

Most importantly, there is simply a lack of clear and convincing evidence that Julius presently has a sexual preoccupation or deviance that he would be unable to control if released. As noted in the court's discussion of the serious-impairment prong, Julius has had no infractions of a sexual nature while in BOP custody. The court has considered Julius's past sexual offenses, which are inarguably deplorable, but the court cannot rely on this past conduct alone. Julius appears to be cognizant of the significant harm he has caused his past victims and to have a desire to reform his conduct upon release. The court has also considered the actuarial evidence presented by each expert, but finds it insufficient to tip the balance in favor of the government.

Having considered the record as a whole, the weight of evidence supports Dr. Franklin's conclusion that Julius is a "garden variety" opportunistic criminal who does not meet the

criteria for commitment. The court concludes that Julius is more akin to "the dangerous but typical recidivist convicted in an ordinary criminal case" than to the "dangerous sexual offender" subject to civil commitment under § 4248. Crane, 534 U.S. at 413.

CONCLUSION

For the foregoing reasons, judgment shall be entered against the United States and in favor of the respondent, William Julius. The stay of release imposed by 18 U.S.C. § 4248(a) is hereby LIFTED, and the United States shall forthwith release Julius from incarceration. As ordered by the United States District Court for the District of Wisconsin, Julius shall report to the United States Probation Office within seventy-two (72) hours of his release in order to begin serving his term of supervised release.

This 18th day of March 2013.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
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